



The 21st Navajo Nation Council

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Speaker Morgan, Council discusses impacts, concerns of high court's opinions in *Morgan vs. Shirley*, *Nelson vs. Initiative Committee* during its work session

WINDOW ROCK, Ariz. – Speaker Lawrence T. Morgan and the 21st Navajo Nation Council met today and discussed concerns and impacts of the Navajo Nation Supreme Courts' opinions in *Morgan vs. Shirley* and *Nelson vs. Shirley* at a work session held at the Council Chamber.

In *Morgan vs. Shirley*, the Council's legal counsel, Christine West of Sutin Thayer Brown, provided an overview of the case and presented options for further legal and legislative action. John Trebon, Attorney at Law, who provided legal counsel in the *Nelson vs. Shirley* case, also gave options for legal and legislative action.

In *Morgan*, the Council was informed it could petition the high court for reconsideration of the case, which is in accordance with the Navajo Rules of Civil Appellate Procedure. Under "petition for reconsideration," "any party seeking reconsideration of a decision of the Supreme Court shall file a petition for reconsideration with a supporting memorandum with the Clerk of the Supreme Court within twenty days after the Clerk has notified the parties that a decision has been rendered by the Supreme Court. The petition shall not be amended except by leave of Court."

Once a petition for reconsideration is filed, the "Justices who heard the appeal may summarily deny it, or if they believe it has merit, they may set it for oral argument before the original panel with notice to all parties." The rule for petitioning the opinion further states "no single justice shall have authority to modify the decision or to order any temporary stay of execution of a Supreme Court decision."

A petition for reconsideration would have to be filed by the close of business day on June 17, 2010 should the Council decide on further legal action.

"There are two groups on the Council – one group who favors reduction and the other group who does not favor reduction," Council Delegate Leonard Tsosie (Pueblo Pintado/Torreón/Whitehorse Lake) said. "We have to listen to both sides, but I guarantee we will have 99 percent of Navajo people against further litigation."

Council Delegate Lorenzo Curley (Houck/Nahata Dził/Lupton), however, said it is incumbent of the Council to provide comments and address its concerns to the courts in the form of reconsideration.

"The Council should not allow radical rulings go without our say," Curley added. "I urge Council members to challenge the opinion in this case because I disagree with radical fundamental principles in these decisions. We have relationships with the outside world – all of that now has to be redefined."

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Although interests to petition the high court's opinion surfaced, the Council's legal counsel advised such an effort would be a waste of time and money based on what factors influenced the court's opinion and the high likelihood of the court staying its opinion.

"In this case as well as *Nelson*, there exists a significant level of uncertainty," Chief Legislative Counsel Frank Seanez said. "With regards to mandates from the Supreme Court, if petition for consideration is not filed it is likely the high court will issue a mandate that the matter is completely finalized and parties need to comply with the decision."

In *Nelson*, some concerns raised by the Council included questions on who or what entity could amend Title II of the Navajo Nation Code, the budget for Fiscal Year (FY) 2011, and the restructuring of the Legislative Branch.

Council Delegate LoRenzo Bates (Upper Fruitland) questioned the role of the Budget and Finance Committee in preparing the Fiscal Year 2011 Budget Appropriations given that the high court ruled the 22nd Navajo Nation Council's first official business is to restructure the legislative branch.

"The Budget and Finance Committee is going to talk about budgeting for the next fiscal year tomorrow (June 3)," Bates explained. "The legislative budget process is based on an 88 member Council. If this Council is hands off, then how is one to proceed on the 2011 budget without having ability to fit the 24 member Council ruling?"

Seanez informed the Council that the first quarter of the FY 2011 budget would entail a budget for an 88 member Council based on the court's recent decision -- the budget prepared now or tomorrow would have to make a determination for changes in the legislative branch, which could prove a difficult task given the high court's decision.

Another concern the Council raised in the *Nelson* case was who and what entity could amend Title II of the Navajo Nation Code.

"It is unclear who can amend if Council cannot make amendments to Title II," Seanez said. "The implication of the opinions sounds like the courts can do and tell the executive branch to make such amendments. However, we will continue to draft legislation for the Council. The Council is still the governing body of the Navajo Nation and has power to enact laws."

Some Council delegates mentioned federal interference on challenging the high court's opinions but were advised by Seanez that "there is no court system currently in place within the Navajo Nation which would allow a review of Navajo Nation Courts" and no direct line of this decision or any other decision to be heard by the federal government.

However, history has shown federal involvement in Navajo Nation internal affairs but to invite the federal government would affect the sovereignty of the Navajo Nation.

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